

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

TORIBIO ARRIAGA-GUERRERO §

VS. § CIVIL ACTION NO. 5:12cv94

UNITED STATES ATTORNEY GENERAL §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Toribio Arriaga-Guerrero, an inmate confined at the Federal Correctional Institution in Texarkana, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the petition be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court concludes petitioner's objections should be overruled. Petitioner's petition does not meet the criteria required to support a claim under the savings clause of 28 U.S.C. § 2255. *See Padilla v. United States*, 416 F.3d 424 (5th Cir. 2005); *Reyes-Requena v. United States*, 243 F.3d. 893 (5th Cir. 2001). The recent Supreme Court decisions in *Lafler v.*

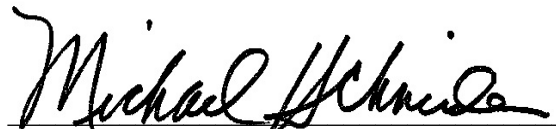
Cooper, __ U.S. __, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012), and *Missouri v. Frye*, __ U.S. __, 132 S.Ct. 1399, 182 L.Ed.2d 379 (2012), did not announce new rules of constitutional law because they merely applied the Sixth Amendment right to counsel to a specific factual context. See *In re King*, 697 F.3d 1189 (5th Cir. 2012). Further, as the Fifth Circuit recognized in *United States v. Rivas-Lopez*, 678 F.3d 353 (5th Cir. 2012), *Lafler* and *Frye* affirmed the Fifth Circuit's existing case law that the Sixth Amendment's protections extend to the plea process. See *Rivas-Lopez*, 678 F.3d at 357. Finally, neither decision suggests that petitioner may have been convicted of a nonexistent offense. Thus, this petition should be dismissed.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

It is SO ORDERED.

SIGNED this 18th day of September, 2013.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE